

## **REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed October 20, 2008. At the time of the Office Action, Claims 1-36 were pending in this Application. Claims 1-26 and 33-36 were previously withdrawn due to an election/restriction requirement. Claims 27-32 were rejected. Claims 1-26 and 33-36 have been cancelled without prejudice or disclaimer. Applicants respectfully requests reconsideration and favorable action in this case.

### **Double Patenting Rejection**

The Examiner rejected Claims 27-32 based on the judicially created double patenting doctrine over claims 1-22 of parent U.S. Patent No. 6,149,620 (“’620 patent”) stating that although the conflicting claims are not identical, they are not patentable distinct from each other.

Applicants respectfully traverse the rejection. However, to reduce the cost and time required to obtain patent protection, a Terminal Disclaimer filed in compliance with 37 C.F.R. 1.321 is attached hereto.<sup>1</sup> The ‘620 patent and the instant patent application are commonly owned by ArthroCare Corporation.

### **New Claims**

New claims 37-42 have been added.

### **Information Disclosure Statement**

Applicants enclose an Information Disclosure Statement and PTO Form 1449, with copies of the references for the Examiner’s review and consideration.

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<sup>1</sup> Applicants note that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.” *Quad Environmental Technologies Corp. v. Union Sanitary District*, 20 USPQ2d 1392 (Fed. Cir. 1991).

### CONCLUSION

Applicants have made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of the pending claims.

The Commissioner is hereby authorized to charge \$140 for the Terminal Disclaimer and \$180 for the IDS and any additional fees necessary or credit any overpayment to Deposit Account No. 50-0359 of ArthroCare Corporation in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512. 358.5925.

Respectfully submitted  
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Date:

1/14/09

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Enclosures: 1) Terminal Disclaimer  
2) Information Disclosure Statement and PTO Form 1449, with copies of the references.